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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case Nos. 05-44481; 06-01136; 06-01677

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

September 14, 2006
10:05 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

1 Notice of Hearing Proposal Eleventh Omnibus Hearing Agenda
2 filed by John William Butler, Jr. on behalf of Delphi
3 Corporation:
4

5 1. IBG-JTC Business Credit Corporation's Motion to Compel
6 -- Docket number 5009;
7

8 2. AG Services Company's Motion to Extend Time to File
9 Appeal -- Docket #4971;
10

11 3. Amended Motion for Relief from Stay filed by Douglas
12 M. Tisdale on behalf of Nutech Plastics Engineering, Inc.
13 Docket #4436;
14

15 4. Ellen W. Engineering Company's Motion for Summary
16 Judgment -- Docket #06-01136;
17

18 5. Delphi Medical Systems Colorado Corporation's
19 Adversary Proceeding -- Docket #06-01677.
20

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25 Transcribed by: Rebecca Kahn

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1 P R O C E E D I N G S

2 THE COURT: Okay, Delphi.

3 MR. BUTLER: Your Honor, good morning. Jack Butler
4 and Kayalyn Marafioti from Skadden Arps Slate Meagher and Flom,
5 LLP on behalf of Delphi Corporation for its Eleventh Omnibus
6 Hearing for the Month of September. Your Honor, we have a very
7 short calendar today. We've been able to sort through a lot of
8 the issues that we've been dealing with and as you know from
9 our last month's hearing, some of -- some issues have been
10 adjourned already to the October 19th Omnibus Hearing.

11 THE COURT: Right.

12 MR. BUTLER: Of the matters that are on the agenda,
13 I'm going to handle three of them rather quickly. There is one
14 contested matter which I'll describe and my partner, Ms.
15 Marafioti will handle that.

16 The first matter on the agenda -- which, with Your
17 Honor's permission we'll use?

18 THE COURT: That's fine.

19 MR. BUTLER: Your Honor, Item Number 1 on the agenda
20 is the IBG-JTC Business Credit Corporation's Motion to Compel,
21 found at docket number 5009. This has to do with the
22 assumption or rejection of unexpired leases. We're continuing
23 to negotiate with them. We believe that we're making progress
24 towards an agreement. With Your Honor's permission we would
25 extend this to adjourn it to the October 19th Omnibus, with an

1 objection deadline of October 12th.

2 THE COURT: That's fine.

3 MR. BUTLER: Thank you, Your Honor. Your Honor,
4 Matter Number 2 presents a slightly different issue. This is
5 the AG Services Company and Robert Bakie's Motion to Extend
6 Time to File Appeal, I find at docket number 4971. This arises
7 as a result of a ruling adverse to AG Services Company and
8 Robert Bakie from which they intend to take an appeal. They
9 asked to -- prior to the expiration of the appeal period -- to
10 extend the appeal period and while the case law suggests that
11 you might need special circumstances in these conditions, Your
12 Honor, the debtors have reviewed this and under the
13 circumstances we have no objection to it. We did not consent
14 but we don't have any objection to it, and no one else has
15 filed an objection.

16 THE COURT: All right. In light of that and my
17 review of the motion, I'll grant the motion. I don't have a
18 proposed order on a disk or in a form that I can enter on ECF,
19 so I'd like counsel for AG Services to forward that to my
20 chambers with a copy to Skadden.

21 MR. BUTLER: Thank you, Your Honor.

22 UNIDENTIFIED VIA TELEPHONE: Thank you, Your Honor.

23 THE COURT: Okay. And I think you have the e-mail
24 address, but if not you can call chambers for it.

25 UNIDENTIFIED VIA TELEPHONE: I do, thank you, Your

1 Honor.

2 THE COURT: Okay.

3 MR. BUTLER: Your Honor, I'd like to take Matter
4 Number 4 out of order. This is the adversary matter up for
5 today, the Ellen W. Engineering Company Motion for Summary
6 Judgment and a series of other matters in the adversary 06-
7 01136. As Your Honor is aware, there is a series of
8 dispositive motions that have been filed by both parties in
9 connection with this matter that were to be argued today, it's
10 not just that motion. The parties have been discussing how to
11 best present those arguments to the Court and frankly, from the
12 debtors' perspective, because this deals with, basically the
13 issue of molding and tooling lanes and because we're examining
14 those issues in a broader context we felt it would be more
15 useful to the Court if we had an opportunity to review the
16 broader issue rather than take up just this matter, and they
17 agreed to our request in that regard. So, with Your Honor's
18 permission, our intention is to move all of this off until, at
19 least the October 19th Omnibus Hearing.

20 THE COURT: All right. That's fine. If -- how do I
21 phrase this? I don't want to delve into all the -- I would say
22 nuts and bolts, but that would be a bad pun -- the arcane of
23 molding and tooling lanes, if I don't -- you know, if it's
24 premature. So just let me know if it's going to be adjourned
25 further as soon as you figure that out.

1 MR. BUTLER: Okay.

2 THE COURT: Otherwise, I'll be prepared for the 19th.

3 MR. BUTLER: Right. Your Honor, we'll do that. I
4 mean, the issue we're confronted with is this -- the issue --
5 some of the issues raised here in which we think we can prevail
6 on the merits, nonetheless are broader issues that are being
7 addressed in the framework discussions.

8 THE COURT: Right.

9 MR. BUTLER: And you know, our hope would be to work
10 this out in a way where Your Honor would never have to delve
11 into the nuts and bolts --

12 THE COURT: Okay.

13 MR. BUTLER: -- but we still are faced with this
14 litigation and we do -- we think the adjournment at this point
15 is appropriate and we're mindful that we'll advise the Court
16 about any further adjournments.

17 THE COURT: Okay. That's fine, then.

18 MR. BUTLER: Your Honor, the last matter on this
19 agenda -- and I have one matter after that in terms of just to
20 advise the Court, but the last matter on the formal agenda is
21 Matter Number 3, this is the Nutech Plastics Engineering,
22 Inc.'s Lift-Stay Motion at docket number 4436. This has been
23 before the Court twice already on preliminary hearings and what
24 we thought was a dispositive determination by the Court at the
25 last omnibus. Nutech nevertheless regards this as the final

1 hearing and wants to ask the Court to proceed on certain
2 matters. My partner, Ms. Marifioti will represent the estate
3 in connection with that contested matter.

4 THE COURT: Okay.

5 MR. TISDALE: May it please the Court, good morning,
6 Your Honor.

7 THE COURT: Morning.

8 MR. TISDALE: Again, my name is Doug Tisdale, T-I-S-
9 D-A-L-E and I serve as counsel to the movant, Nutech Plastics
10 Engineering. With me today at counsel table, Your Honor, is
11 Mr. Jay Schwartz. Mr. Schwartz is Nutech's Michigan trial
12 counsel in this matter. Your Honor, we're here this morning
13 actually to accept the opportunity that was afforded to us by
14 the Court both in July and expressly stated in August at the
15 Omnibus Hearing in which we did not participate, to come back
16 and, as the Court said to tell me more about it. And that's
17 what we're here to do. For the sake of this record there are,
18 in fact, three changed facts and three clarifications that we
19 believe need to be reported to this Court.

20 Changed fact Number 1, Your Honor, relates to the
21 issue of trial counsel for Delphi and trial counsel for General
22 Motors. The state of the record before this Court now based
23 upon the affidavits that have been submitted -- and we have
24 those separately presented here, today and have made them
25 available to the debtor. The state of the record before the

1 Court today is that it is now and shall be the same trial
2 counsel for Delphi and for General Motors. General Motors is
3 not going to have to go out and find new trial counsel, they're
4 not going to be prejudiced in any way. Mr. Lippert, Mr. Tim
5 Lippert from the -- excuse me, from Michigan area is now, has
6 been and will continue to represent both Delphi and General
7 Motors.

8 THE COURT: Well, let me stop you on that. That --
9 as I took it, that was based, simply on the fact that as the
10 state of play left it here in the Bankruptcy Court -- assuming
11 that the Michigan Court was prepared to try simply the General
12 Motors matter -- Delphi was really taking a back seat. So
13 there was no reason for them to switch counsel. Am I missing
14 something? Was there any further determination that
15 conclusively -- they're so aligned that they would -- if in
16 fact both defendants were to be proceeded against that they
17 would have the same counsel?

18 MR. TISDALE: Your Honor --

19 THE COURT: I mean it seems to me, just based on --

20 MR. TISDALE: -- that's exactly what hap -- I'm
21 sorry.

22 THE COURT: I mean, if it's just based on what
23 happened -- which was that they said let's try it all together,
24 then I, you know --

25 MR. TISDALE: No. Respectfully, Your Honor, and

1 that's what, certainly Mr. Schwartz would testify to. Mr.
2 Lippert has been counsel for General Motors and for Delphi for
3 the past several years and that has always been assumed to be
4 the state that would continue until the bankruptcy was filed.
5 When that was filed, that state did not change and Mr. Lippert
6 has confirmed that state will not change, and that they are.
7 Now, Your Honor, relative to the indemnification agreement
8 between the parties, and why that takes place -- we don't have
9 that. We don't have privilege to understand what the actual
10 relationship is. My anticipation for something like that would
11 be, obviously, that Delphi has assumed completely all the
12 obligations of General Motors and therefore, of course will
13 have the same counsel so that they can just deal with this.
14 And I say that, Your Honor, because it's important in terms of
15 one of the -- if you will -- clarifications we wanted to bring
16 to the Court -- let me jump ahead to that. And that is, what's
17 the base for this lawsuit? Very briefly, it's a contract that
18 was entered into by Nutech with the Delphi division of General
19 Motors. They performed under the contract. Delphi then got
20 spun-off. Then the contract was breached by Delphi. Now it
21 was the same people, sitting in the same offices, doing the
22 same things, but there was a spin-off and the breach occurred
23 after that. Both parties: General Motors and Delphi were
24 joined in the litigation because plaintiff had to be sure we'd
25 covered the waterfront. That said, Your Honor, the facts as

1 Delphi and General Motors knew them and undoubtedly address in
2 their indemnification agreement are that Delphi, as a separate
3 legal entity, was the actor. And that's the reason these
4 claims are not derivative as to Delphi, it's Delphi's conduct.
5 And that's the reason it's the same trial counsel. Because
6 Delphi obviously is the --

7 THE COURT: You're actually making a case for having
8 the stay in place for the whole thing.

9 MR. TISDALE: Your Honor, what we're actually saying
10 is, because the Berger Boy's facts haven't changed and the
11 Sonax Factors have not changed -- and that's what we addressed
12 and they have not -- but what we have had is a judicial
13 admission on the record by the debtor, through the debtor's
14 trial counsel that the claims are interrelated and inseparable
15 and that the case ought not to be bifurcated. And that's the
16 joint answer that General Motors and Delphi signed by Delphi as
17 Delphi's counsel filed two weeks ago in the State Court.

18 Now, Your Honor, if Delphi in the State Court is
19 telling the State Court these are interrelated, inseparable,
20 ought not to be bifurcated and oh, by the way, we were on the
21 eve of trial -- it is difficult to understand how Delphi is
22 standing here can take the position -- well no, they ought to
23 be bifurcated, they are not related and they are separable. We
24 think it's unfair to try to whipsaw a plaintiff in State Court
25 just because you can stand up in the Bankruptcy Court eight

1 hundred miles away and claim that in fact, it's different than
2 what you just told the State Court in Michigan.

3 THE COURT: But they lost on that. So, it's not
4 judicial estoppel.

5 MR. TISDALE: Your Honor, no. Actually the judge
6 said, I do find that they are interrelated and inseparable.
7 That's what the judge's order said. And the judge said, in
8 fact, that the Court would not ordinarily bifurcate. And so,
9 the judge said look, pending a determination by this Court
10 under 362(d) -- by which we mean a final determination, because
11 we did not have a final determination on the first hearing in
12 July. In fact, there's a good argument we didn't have really
13 what we understood to be a preliminary -- but that said we
14 do -- which we simply preserve for the record -- we do note
15 that there hasn't been a final determination and our position
16 is that a final determination ought to be given now in light of
17 these changed facts and changed circumstances.

18 The Michigan Trial Court having stated that it agreed
19 with, acknowledged and adopted what defendant Delphi said --
20 which is that they are interrelated and inseparable -- that the
21 cases ought not be bifurcated -- brings us clearly back into a
22 Burger Boys analysis, as cited previously, and the most
23 important of the Sonax Factors -- as previously stated --

24 THE COURT: The Court didn't say they were
25 interrelated and inseparable. The Court said it would

1 ordinarily -- as any Court would, try Nutech's claims against
2 Delphi and General Motors together because it would be the most
3 efficient use of judicial time and resources.

4 MR. TISDALE: The Court said the debtor -- that
5 defendants Delphi and General Motors had acknowledged that they
6 were interrelated and inseparable. That's the point that we're
7 making, Your Honor, relative to the Court's conclusion. And --
8 help me, that's just above paragraph -- unnumbered Paragraph 3
9 of the order. Two and three reference that, Your Honor.

10 THE COURT: Right.

11 MR. TISDALE: And that's the point that I said.

12 THE COURT: Okay.

13 MR. TISDALE: And that is that, in fact, the Court
14 noted that defendants Delphi and GM had acknowledged that they
15 were inseparable and interrelated --

16 THE COURT: Okay.

17 MR. TISDALE: -- and the Court said, I wouldn't
18 bifurcate. Your Honor, trial courts are always reluctant to
19 speak to a federal -- State Trial Courts, particularly -- are
20 reluctant to speak to a State Trial Court to a Federal
21 Bankruptcy Court in plainer terms than saying, the Court's not
22 inclined to do a bifurcation. The Court also doesn't have the
23 benefit of the analysis and the expertise of this Court in
24 dealing with the Second Circuit's 1994 opinion in Sonax in
25 understanding the importance and the centrality of the point

1 that this case was on the eve of a jury trial in Michigan. And
2 now, many months later, that having been delayed, we're trying
3 to get back on track and have that trial. And we think it's
4 fair and we think it's equitable and we think it is not a
5 distraction to the debtor for the simple reason that the trial
6 counsel is the key person, because none of the employees of
7 Delphi who are there now are involved in this trial. This
8 entire case deals with people who are gone. The only person
9 who is running this thing is Mr. Papillion in the general
10 counsel's office who is actually responsible for running Mr.
11 Lippert who's the trial counsel. Those are the people at
12 Delphi who are involved in this case. Given the fact that
13 that's the only extent of the distraction and it was on the eve
14 of trial and the Michigan Trial Court has sent this Court, now,
15 a message that it would not otherwise bifurcate and that it
16 believes in fairness and equity they ought to go ahead
17 together, we submit this Court --

18 THE COURT: Where does it say that? It's just
19 talking about judicial convenience.

20 MR. TISDALE: Yes, Your Honor.

21 THE COURT: And it's talking about -- without a
22 bankruptcy case. But that Congress recognized, under the
23 automatic stay and the Second Circuit recognized in Sonax that
24 when you're talking about judicial convenience in a bankruptcy
25 court case there's a whole different set of factors.

1 MR. TISDALE: Your Honor --

2 THE COURT: This is not a ruling, and you'll never
3 convince me that this is a ruling by the District Court that
4 somehow either the stay should be lifted or that it's not
5 prepared to go ahead with the trial against Delphi -- I mean
6 against GM.

7 MR. TISDALE: Right. Your Honor, I don't pretend to
8 say that the Michigan State Court said anything other than what
9 it stated in the order. But I do believe that the court can
10 fairly intuit from what is stated in the order -- and
11 particularly from the facts and circumstances presented and
12 from the answer that this debtor filed in the State Court two
13 weeks ago in response to the motion to set for trial, in
14 acknowledging that the matter ought not to be bifurcated and in
15 persisting that they were interrelated and inseparable that in
16 fact, Your Honor, that should be a compelling factor in the
17 Court's exercise of its discretion here. And that equity -- in
18 light of the facts presented -- would indicate there should be
19 relief.

20 Your Honor, yes of course, relief from stay is to be
21 sparingly granted. Of course there is supposed to be breathing
22 room. But that's the reason that Sonax -- when it adopted
23 Judge Allen's twelve factors from Curtis out of the District of
24 Utah said these are the factors you look at. And you don't
25 take all of them. You don't have to meet all of them. The

1 Court obviously looks at the relevant factors and may give them
2 whatever weight the Court deems appropriate. But, Your Honor,
3 under the circumstances as presented here, when you are on the
4 eve of trial that really is very important. You look at
5 Lebenthal and Horvath and you look at some of the other cases
6 where you've had discovery concluded or trial commenced or
7 about to commence, and that's what ultimately convinces the
8 Court that relief from stay is appropriate. The matter is teed
9 up, let it go ahead. Why should this Court bother itself with
10 the further administration of that matter when the parties have
11 already -- pursuant to their voluntary choice -- been there,
12 done that. Let it go ahead. That's the only thing we're
13 asking and we think that the admissions by the debtor -- in
14 this case, defendant Delphi in the State Court along with its
15 co-defendant, General Motors -- ought to be looked at as a
16 persuasive factor in the Court's exercise of its discretion
17 here.

18 And we think that the argument as to distraction is,
19 at best, as we stated before, Your Honor, you know, breathing
20 can be a distraction. Digestion can be a distraction. The
21 reality is it's not an interference with the administration of
22 the case. And that's what in fact, the distraction/shorthand
23 argument addresses relative to relief from stay.

24 And we believe that with the testimony that can be
25 presented by Mr. Schwartz in support of the affidavits, all he

1 would testify to is relative to the matters set forth in the
2 affidavits -- we've presented those. But we believe that on
3 that record, Your Honor, it is appropriate for this Court now
4 to take the opportunity to visit.

5 We did accept the invitation to come back and tell
6 you more about it -- as you stated on the record on August
7 17th. We're telling you more about it by giving you the
8 context and pointing out the changed facts and the
9 clarifications. And we think that with those in mind, Your
10 Honor, it is appropriate for this Court now, on the basis of
11 this record as presented before this Court, to enter final
12 relief in favor of Nutech so that the trial can proceed in
13 Michigan relative to both the debtor and General Motors.

14 THE COURT: Okay.

15 MR. TISDALE: Thank you, Your Honor.

16 MS. MARAFIOTI: Good morning, Your Honor. Kayalyn
17 Marafioti on behalf of Delphi Corporation. Counsel stated that
18 there were three new changed facts or clarifications that
19 should warrant this Court's rethinking of its earlier ruling to
20 keep the stay in place as to Delphi but permit the case in
21 Michigan to go forward as against GM. I was counting and I
22 didn't hear three changed facts or circumstances. In fact I
23 didn't hear any. But just for the record, as to the first
24 point -- it is an historical fact that the same counsel, the
25 Lippert, Humphries firm has represented both GM and Delphi

1 throughout these cases. And that is probably why the signature
2 block was left on the papers when counsel responded to Nutech's
3 request to set a trial date for GM. But it would be
4 nonsensical to interpret those papers as speaking for anybody
5 but GM.

6 The answer that the counsel gave about the matters
7 being interrelated was spoken on behalf of GM in an effort to
8 preclude the Court from even going forward on that part of the
9 hearing and the Court obviously denied that relief, set an
10 order establishing a trial date for next year and we don't
11 think there's anything in the record at all that should be
12 twisted to support a rethinking of this Court's earlier
13 decision.

14 The fact of the matter is, this was a routine, pre-
15 petition breach of contract case Nutech had brought against the
16 two companies; it was stayed by this Chapter 11 filing; Nutech
17 came to this Court and filed a proof-of-claim for thirteen
18 million dollars and we think that that claim should be heard
19 and determined by this Court as you said on the 17th of July,
20 and that there's no reason to change that. There are no new
21 facts here that would lead otherwise. There are certainly no
22 judicial admission in those papers. It was an unfortunate
23 mistake that the signature block did say attorneys for Delphi
24 and GM, but it's pretty obvious from reading those papers and
25 Mr. Lippert would testify, if he were called, that he intended

1 to speak for GM when he said those things.

2 In any event it seems kind of moot, because now
3 Nutech does have a trial date to go forward against GM and this
4 Court is in a position to entertain the claims in the proof-of-
5 claim process that goes, naturally forward. So we really don't
6 think there's anything new here. We don't think that counsel
7 should twist those arguments to try to make it sound new and we
8 believe that the Court should deny this request for relief from
9 the stay.

10 THE COURT: So the debtors are still prepared to let
11 the litigation proceed against GM?

12 MS. MARAFIOTTI: Absolutely, Your Honor. And I think
13 that, you know, at this point we really would have to get
14 different counsel. At the moment that hasn't been
15 accomplished. As I said, it's an historical fact that the same
16 counsel represented both companies and he's never been
17 withdrawn from, you know, that position. So, he's not
18 incorrect when he stated on the face of the pleadings that he
19 still represents Delphi. But he certainly was not speaking for
20 Delphi when he said those things, and in any event, the State
21 Court ignored it. The State Court ruled against GM and set a
22 trial date against GM.

23 THE COURT: Okay.

24 MR. ROSENBERG: May I be heard, Your Honor?

25 THE COURT: Yes.

1 MR. ROSENBERG: As Your Honor is aware, discussions
2 are ongoing as to the framework for what a plan of
3 reorganization might look like down the road and they are
4 enormously complex as Your Honor can imagine. One of the
5 primary issues of concern in those discussions is claims
6 administration. And the effective and rapid administration of
7 claims is going to be essential if any framework is going to
8 result in a consummated plan of reorganization. Therefore, the
9 Unsecured Creditors' Committee is deeply concerned about any
10 leakage out of this court into other entities with respect to
11 claims administration against the debtor. Certainly nothing I
12 have heard in the couple of hearings where I've listened to
13 this matter suggest to me that there is anything unique here
14 that requires that leakage which will -- as I suggest -- create
15 a real problem down the road in terms of our ability to
16 consummate a plan.

17 Claims administration in this Court will be
18 absolutely essential and frankly I don't consider that to be
19 bothering this Court. I think that this Court's role
20 contemplates that and nothing we have heard today suggests
21 otherwise. Thank you.

22 THE COURT: Okay. All right. I would treat this as
23 the final hearing on Nutech Plastics Engineering's Motion for
24 Relief from the Automatic Stay to continue to pursue pre-
25 petition litigation pending in Michigan State Court. That

1 litigation is pending against both GM as well as Delphi. At
2 the preliminary or initial hearing on the motion it became
3 clear to the Court that notwithstanding the alleged indemnity
4 by -- as alleged by Nutech of Delphi of GM -- Delphi was
5 prepared to permit the litigation to proceed against GM.

6 As everyone knows, one of the factors the Court
7 should consider under the Sonax Case of the Second Circuit is
8 whether litigation involves third parties and whether at least
9 the stay could be lifted insofar as litigation concerning those
10 third parties. I stated at that preliminary hearing that given
11 the debtors' willingness to permit the litigation to proceed
12 against GM and my ability to inform -- through the parties or
13 through the transcript -- the Michigan State Court that it
14 would not have to conduct two trials, i.e., if the trial
15 proceeded against GM, that this Court, through a claims
16 administration process which may well be informed by the
17 results in this case of the outcome of a trial against GM --
18 would be responsible for liquidating Nutech Plastic's claim
19 against Delphi, that such an arrangement might be acceptable.
20 That included, obviously, being acceptable to the Michigan
21 State Court.

22 There was a subsequent scheduling motion and ruling
23 in the Michigan litigation at which the Michigan Court, Judge
24 Farah determined that in fact, he was prepared and, in fact,
25 did schedule a trial solely against General Motors in light of

1 the existence of the automatic stay.

2 Nutech contends nevertheless, that in addition to
3 proceeding against GM it wants also to proceed in the trial
4 against Delphi and therefore seeks that relief. It does so on
5 two theories, one is the theory that there have been changed
6 facts and circumstances from the preliminary hearing and
7 secondly, whether or not there have been changed facts and
8 circumstances that it should be entitled, in any event under
9 the Sonax factors to proceed against both Delphi as well as GM.

10 I conclude that -- to the extent that the record has
11 become clearer subsequent to the preliminary hearing that, in
12 fact, the record supports maintaining the stay here insofar as
13 the claim against Delphi is concerned. That is because, as I
14 expected, the Michigan Court was prepared to proceed with the
15 case solely against GM as evidenced by Judge Farah's September
16 11th, 2006 order.

17 Secondly, one of my concerns in respect of my
18 believing that the stay should remain in place as against
19 Delphi, was that Delphi might well need additional -- or its
20 own trial counsel in the matter which would further delay the
21 litigation and in essence, make it not ready for trial.

22 In my view the application made ostensibly jointly by
23 GM and Delphi for a continuance of the Michigan trial until
24 after Delphi's case is administered, highlights that conflict.
25 Obviously that application was made solely on behalf of GM

1 because Delphi was prepared to let the trial go ahead.

2 Clearly, counsel ostensibly representing both parties was
3 really acting solely for GM in making that motion.

4 Moreover, I take judicial notice of the fact that the
5 underlying issue of Delphi's indemnification or other
6 responsibility for GM claims -- or claims against GM by third
7 parties upon which Nutech contends that the parties in its
8 litigation -- that is GM and Delphi -- are inextricably
9 intertwined is a central issue in this case. In fact, the
10 Creditors' Committee and the shareholders have strongly
11 contended -- although they're -- as Mr. Rosenberg said, in
12 simultaneously active discussions to try to resolve the issue
13 that that indemnification is not enforceable -- which again,
14 highlights a potential conflict that counsel might have in
15 representing both Delphi and GM in the litigation.

16 So my view is that Delphi, having chosen -- and it
17 certainly could have taken an opposite approach given the
18 indemnification -- but Delphi having chosen to not assert the
19 automatic stay to protect GM in the litigation, the litigation
20 can proceed against GM, but that it should not proceed given
21 the automatic stay -- against Delphi.

22 That is because, as I said at the preliminary
23 hearing, essentially for two reasons. First, I think it likely
24 that Delphi would need its own separate counsel, which would
25 further delay the trial. Second, I believe that that as a

1 matter of efficient bankruptcy claim administration -- Delphi
2 having already consented to the stay being lifted or permitting
3 the litigation to proceed against GM -- it's efficient to have
4 Nutech's claim dealt with in a claim administration process,
5 that I'm sure will include Delphi's examining carefully the
6 trial record -- if the case does proceed to trial and to
7 judgment. But that fits into the context of dealing with tens
8 if not hundreds of thousands of claims against this enormous
9 company in a bankruptcy context -- which is a context that
10 requires a different assessment of the efficient use of
11 judicial time and resources than the ordinary state court
12 litigation approach.

13 So, for those reasons, I'll permit the litigation to
14 proceed against GM but not against Delphi.

15 MS. MARAFIOTI: Thank you, Your Honor.

16 MR. BUTLER: Thank you, Your Honor. Your Honor,
17 there is a fifth matter on the agenda, Matter Number 5 which is
18 a Delphi Medical Systems Colorado Corporation's adversary
19 proceeding. It's adversary proceeding number 06-01677. Mr.
20 Berger is handling that on behalf of the estate after which
21 I've got one matter for the Court.

22 THE COURT: Okay.

23 MR. BERGER: Good morning Judge.

24 THE COURT: Morning.

25 MR. BERGER: Neil Berger for the Togut, Segal & Segal

1 for the debtors. Your Honor, this is a first pre-trial
2 conference for this adversary proceeding. It's a four million
3 dollar demand by the debtors for goods sold and delivered.
4 There were settlement negotiations that went through the fall,
5 winter and spring -- ultimately broke off. It's no secret to
6 either side that Delphi commenced this adversary proceeding
7 with the hope to reengage access in settlement negotiations.
8 That has occurred, they've reached out to us but they have, at
9 the same time have invoked a mandatory arbitration provision in
10 the parties' contract and that provision could be invoked
11 either before or after litigation was commenced. I assume
12 we're proceeding on two bases, Your Honor. One is a
13 negotiation with the hope that we'll be able to work out some
14 type of repayment schedule to the debtors and the second is,
15 it's getting ready for an arbitration so that if the settlement
16 negotiations don't prove fruitful, we can get an expeditious
17 resolution on the arbitration.

18 THE COURT: Okay.

19 MR. BERGER: We've agreed, subject to Your Honor's
20 agreement that the matter would be carried to October so that
21 we could come back and report to Your Honor and Your Honor
22 could supervise what's happening here. Again, subject to Your
23 Honor's consent we've also agreed to extend the time within
24 which Axis can respond to the complaint and we'd be submitting
25 a stipulation to that.

1 THE COURT: All right. But right now it appears to
2 you that, if there's not a settlement it will be in
3 arbitration?

4 MR. BERGER: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. BERGER: Your Honor, one housekeeping measure, if
7 I may, quickly. I got a call last night from counsel for
8 Methode Electronics who set up notice of motion and motion to
9 appear at docket numbers 4913 and 4912 and he asked that I
10 confirm, and I will on the record, that while Methode's motion
11 was originally scheduled for today, by agreement it was carried
12 off the agenda until October so we can try to work something
13 out, and that it will appear in the footnote of matters being
14 carried on the agenda on the October agenda letter.

15 THE COURT: Okay.

16 MR. BERGER: Thank you, Judge.

17 THE COURT: That's fine.

18 MR. BUTLER: Your Honor, that concludes the oral part
19 of the debtor's Omnibus Hearing for September. As Your Honor's
20 aware, in connection with the Section 1113, 1114 litigation,
21 the debtors, the statutory committees the ad hoc committees and
22 certain other objectors, including all six of the unions held a
23 meet-and-confer earlier this week. I spent a good portion of
24 the morning on Tuesday addressing matters relevant to that
25 litigation and the parties jointly advise the Court that we

1 would seek another meet-and-confer conference today and an in
2 camera chambers conference. Those parties are scheduled to
3 meet in fifteen minute's time here in this -- elsewhere in the
4 courthouse and we want to simply advise the Court, for
5 scheduling purposes that we expect that conference will take no
6 longer than about thirty minutes.

7 THE COURT: Okay.

8 MR. BUTLER: The meet-and-confer.

9 THE COURT: Do you intend to come back and say
10 something to me, either on or off the record after that
11 conference?

12 MR. BUTLER: We need to -- as the parties asked Your
13 Honor on Tuesday in advised chambers, we'd like to have an in
14 camera chamber's conference after -- you know, at whatever time
15 Your Honor will hear us but that would be off the record and in
16 camera and I think that the total time of that discussion would
17 probably be about fifteen minutes, tops.

18 THE COURT: Okay. All right, well, as you can see I
19 have a lot of people here on the Refco Case. I'm not sure how
20 long that matter's going to take this morning. So, what I'll
21 do is I'll ask one of my clerks to report back to you on
22 whether I can take you before lunch or not.

23 MR. BUTLER: Thank you, Your Honor.

24 THE COURT: Okay, thanks. So you're going to be in
25 the visiting judge's rooms?

1 MR. BUTLER: Yes, Your Honor.

2 THE COURT: Okay. So, I'll send one of my clerks
3 over there.

4 MR. BUTLER: Thanks, Your Honor.

5 THE COURT: Okay. Do you need someone to set up the
6 call or has that been set up?

7 MR. BUTLER: I think it's been set up, Your Honor.

8 THE COURT: It's been set up? Okay. All right.

9 MR. BUTLER: Thanks, Your Honor.

10 THE COURT: Okay.

11 (Time noted: 10:44 AM)

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C E R T I F I C A T I O N

I, REBECCA KAHN, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

REBECCA KAHN

September 17, 2006

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